IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 36426 of 2003(J)

PETITIONER:

V.J.MATHEW, SON OF JOSEPHJ,
VETTUVELIL HOUSE, VAZHOOR VILLAGE AND POST,
KOTTAYAM DISTRICT.

BY ADV. SRI.P.KURUVILLA JACOB

RESPONDENTS:

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1. THE SECRETARY,
DISTRICT PANCHAYATH, KOTAYAM.

2. THE SOIL CONSERVATION OFFICER,
KOTTAYAM.

3. THE SECRETARY, VAZHOOR GRAMA
PANCHAYATH, VAZHOOR POST, KOTTAYAM DISTRICT.

*4. MR.K.S.THOMAS, S/O. SCARIAH,
AGED 50 YEARS,
KAIPPANPLACKAL HOUSE NO. 393,
VAZHOOR VILLAGE,
CHAMAMPATHAL P.O.

(* impleaded AS ADDITIONAL 4TH RESPONDENT VIDE ORDER DATED 09/02/2004 IN I.A.No 834/2004)

BY GOVERNMENT PLEADER
SRI.BABU CHERUKARA
SRI.P.A.SALIM
SRI.JOSY ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 36426/2003

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE PROCEEDINGS OF THE MEETING DATED 07/01/2002 OF THE BENEFICIERIES OF THE RETAINING WALL TO BE CONSTRUCTED FOR ULLAYAM-CHAMAMPATHAL CANAL, INCLUDING ELECTION OF A BENEFICIARY COMMITTEE FOR THE AFORESAID WORK.

P2 : COPY OF LETTER DATED 18/01/2002 OF SANTHY RAJAPPAN, THE DISTRICT PANCHAYATH MEMBER OF PONKUNNAM DIVISION, ISSUED TO PETITIONER.

P3 : COPY OF AGREEMENT DATED 18/01/2002 EXECUTED BY PETITIONER AND CHAIRMAN OF THE BENEFICIARY COMMITTEE (FOR THE CONSTRUCTION OF THE RETAINING WALL FOR ULLAYAM – CHAMAPATHAL CANAL) BEFORE SECOND RESPONDENT.

P4 : COPY OF THE ORDER DATED 24/1/2002 OF SECOND RESPONDENT COMMUNICATED TO PETITIONER.

P5 : COPY OF LETTER DATED 05/04/2002 OF THE TALUK SURVEYOR AT CHANGANACHERRY FORWARDED TO 3RD RESPONDENT.

P6 : COPY OF ORDER DATED 09/04/02 IN CMP NO. 13996/2002 IN O.P.No. 7796/2002 OF THE HON'BLE HIGH COURT.

P7 : COPY OF LETTER DATED 24/2/2003 OF 2ND RESPONDENT COMMUNICATED TO PETITIONER.

P8 : COPY OF PETITIONER'S REPLY DATED 07/03/2003 FORWARDED TO 2ND RESPONDENT.

P9 : COPY OF PHOTOGRAPHS OF THE HOUSE RECENTLY BUILT BY SHRI.JOHNC.THOMAS WHO IS ASSIGNED IN THE SOIL CONSERVATION OFFICE AT PALAI, INDICATING THE DANGEROUS CONDITION OF THE NEARBY ULLAYAM – CHAMAMPATHAL CANAL.

P10 SERIES : COPY OF PHOTOGRAPHS OF THE WORK SITES RELATED WITH THE WORK PARTLY EXECUTED BY THE PETITIONER AT THE SIDE OF ULLAYAM – CHAMAMPATHAL CANAL.

RESPONDENT'S EXHIBITS

R4(1): COPY OF NOTICE DATED 12/11/2001

R4(2): COPY OF MINUTES FOR THE MEETING DATED 12/11/2001.

R4(3): COPY OF MINUTES FOR THE MEETING DATED 01/12/2001.

R4(4): COPY OF COMPLAINT DATED 06/02/2002.

R4(5): COPY OF the AFFIDAVIT DATED 09/04/2002

// TRUE COPY //

jg PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

WP(C) No. 36426 of 2003 J

Dated, this the 16th day of March, 2007

J U D G M E N T

Heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the 1st respondent, the learned Government Pleader and the learned counsel appearing for the additional 4th respondent impleaded.

2. The petitioner as Convener of beneficiary committee was awarded contract for construction of protection wall for a canal in the 3rd respondent panchayat. The petitioner is advanced an amount of Rs. 1 lakh and according to the petitioner, granite rubble for more than the value of Rs. 1 lakh is procured and stored in the work site. Petitioner has produced some photographs, which shows that same quantity of granite rubble is stored in the area. The learned counsel appearing for the 1st respondent submitted that on account of delay, work had to be cancelled. The dispute raised by the additional 4th respondent is that petitioner has not allowed committee members to co-operate in the work. It is seen that besides this case, there were

two other writ petitions in this Court, which were all disposed of as of now. In WP(C) No. 2403/2005, there was a direction to the Taluk Surveyor to survey the property and earmark the course of the canal and the course for protection wall to be constructed by the petitioner. If this is not done so far, the Taluk Surveyor has to do it without any delay. I do not think delay in execution of work is attributable to the petitioner because obviously the matter was in litigation in this Court and also in Civil Court. More over, if the work is cancelled and rearranged, the same will lead to higher cost to the beneficiaries and ultimately loss to the public at large. In the circumstance and since the petitioner has procured substantial quantity of material, this writ petition is disposed of with the following directions. The 2nd respondent and the engineer allotted by the 1st respondent will evaluate and oversee the execution of the contract. The material procured should be valued first and if there is provision in the contract to advance funds to the petitioner to procure material for the execution of the work, they will go by the contract and make advances to the petitioner, if permissible, as per the terms under

the contract after collecting security. Petitioner will carry out the work and complete it within a period of three months from today. The 1st and 2nd respondents are directed to take immediate steps to get the survey done by Taluk Surveyor and oversee the completion of work by the petitioner and eligible amount also should be made to the petitioner without any delay, so that the work is not delayed beyond further three months.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg